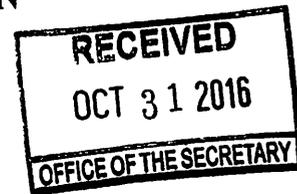


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17405**

**In the Matter of**

**BAY CITY TRANSFER AGENCY  
AND REGISTRAR, INC. and  
NITIN M. AMERSEY**

**Respondents.**

**THE DIVISION OF ENFORCEMENT'S  
MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement ("Division") respectfully submits this Motion for Summary Disposition against Respondents Bay City Transfer Agency and Registrar, Inc. and Nitin M. Amersey ("Respondents") pursuant to Amended Rule 250 of the Rules of Practice and the Court's Order Following Prehearing Conference.

The Division respectfully submits that summary disposition is appropriate and that the Court should enter an order finding the Respondents liable for willfully violating Sections 17(a)(3) and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder.

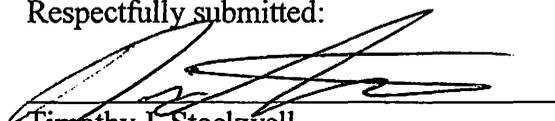
Further, the Court should impose the following sanctions: (1) enter a cease-and-desist order against Respondents pursuant to Sections 17A(c)(3) and 21C(a) of the Exchange Act; (2) revoke Bay City Transfer Agency and Registrar, Inc.'s transfer agency registration pursuant to Section 17A(c)(3)(A) of the Exchange Act; (3) bar Nitin M. Amersey from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization, pursuant to Section 17A(c)(4)(C) of the

Exchange Act; and (4) impose tier-two civil penalties against Respondents pursuant to Section 21B(a)(2) of the Exchange Act.

In support of this Motion, the Division offers the accompanying Memorandum of Law.

Dated: October 28, 2016

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Timothy J. Stockwell', written over a horizontal line.

Timothy J. Stockwell  
Charles J. Kerstetter  
Division of Enforcement  
U.S. Securities and Exchange Commission  
175 West Jackson Blvd, Suite 900  
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Phone: 312-596-6049  
Email: stockwellt@sec.gov

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**ADMINISTRATIVE PROCEEDING**

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**In the Matter of**

**BAY CITY TRANSFER AGENCY  
AND REGISTRAR, INC. and  
NITIN M. AMERSEY**

**Respondents.**

**CERTIFICATE OF SERVICE**

Timothy J. Stockwell, an attorney, certifies that on October 28, 2016, he caused a true and correct copy of the foregoing Motion for Summary Disposition against Respondents Bay City Transfer Agency and Registrar, Inc. and Nitin M. Amersey to be served on the following by overnight delivery and email:

Honorable Brenda P. Murray  
Chief Administrative Law Judge

Nitin M. Amersey  
(Individually and on behalf of BCTA)

Dated: October 28, 2016



Timothy J. Stockwell  
Division of Enforcement  
U.S. Securities and Exchange Commission  
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Email: stockwellt@sec.gov

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING  
File No. 3-17405**

**In the Matter of**

**BAY CITY TRANSFER AGENCY  
AND REGISTRAR, INC. and  
NITIN M. AMERSEY**

**Respondents.**



**MEMORANDUM IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S  
MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS BAY CITY  
TRANSFER AGENCY AND REGISTRAR, INC. AND NITIN M. AMERSEY**

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## I. INTRODUCTION

The Division of Enforcement (the “Division”) respectfully submits this Memorandum in Support of Motion for Summary Disposition against Respondents Bay City Transfer Agency and Registrar, Inc. (“BCTA”) and Nitin M. Amersey (“Amersey”) (collectively “Respondents”) pursuant to Amended Rule 250 of the Rules of Practice. On August 18, 2016, the Securities and Exchange Commission (“Commission”) entered against Respondents an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 17A and 21C of the Securities Exchange Act of 1934 (“OIP”) based on Respondents’ repeated violations of certain transfer agent rules.

On September 28, 2016, the parties held a prehearing conference with this Court. At that hearing, the Division stated that it will seek revocation of BCTA’s transfer registration, an industry bar against Amersey, a cease-and-desist order, and a civil monetary penalty. Amersey appeared *pro se* and stated that he does not contest the allegations contained in the OIP, and that he only opposed the Division’s penalty recommendation, contending that Respondents are unable to pay any penalty.

Amersey’s admissions at the prehearing conference and the Court’s subsequent order establish a set of undisputed facts as detailed in the OIP and resolve all issues as to the liability of the Respondents. Further, his admissions resolve all remedial sanctions to be imposed under Section 17A and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), except for civil penalties pursuant to Section 21B of the Exchange Act. The facts set forth herein establish that the public interest would best be served by assessing tier two civil penalties against Respondents.

## **II. STATEMENT OF UNDISPUTED FACTS**

### **A. The Division's Order Instituting Proceedings**

This proceeding was instituted on August 18, 2016, by an Order Instituting Administrative Proceedings Pursuant to Sections 17A and 21C of the Securities Exchange Act of 1934, and Notice of Hearing (“OIP”). The OIP is based on BCTA’s repeated violations of the Commission’s transfer agent rules since at least 2007, including: (1) violations of rules providing for the safeguarding of client funds (Rule 17Ad-12); (2) filing deficient and delinquent Forms TA-1 and TA-2 (Rules 17Ac2-1 and 17Ac2-2); (3) failing to create and follow proper procedures regarding searching for lost security holders (Rule 17Ad-17); and (4) failing to prepare and maintain the required records or calculations to show that it was exempt from certain transfer agent rules (Rule 17Ad-4). *See* OIP at ¶¶ 11-15.

### **B. Amersey's Control Over BCTA**

On September 14, 2016, in response to a request from the Court, the Division filed a notice and accompanying evidence establishing that Amersey controls BCTA. *See* Division of Enforcement’s Notice (9/14/16). The evidence included BCTA’s most recently filed Form TA-1, which reported that Amersey controls BCTA, and Amersey’s January 26, 2016, investigative testimony, wherein Amersey testified that he is the control person – as the SEC defines it – of BCTA. *Id.*, Exh. 1-2. On September 19, 2016, in an Order postponing the prehearing conference, this Court found that the Division’s notice and accompanying evidence established that Amersey controls BCTA. *See* Order Postponing Prehearing Conference (9/19/16).

### **C. Amersey's Admissions at the Prehearing Conference**

On September 28, 2016, the parties held a prehearing conference with this Court. *See* Attached Exh. 1 (Transcript of Prehearing Conference, 9/28/16). At that hearing, Amersey

appeared *pro se* and repeatedly stated that he does not contest the allegations contained in the OIP. *Id.* at 4, 8-9, 17, 19.

The Division stated at the hearing that it is seeking the following remedial sanctions against Respondents: (1) revocation of BCTA's transfer agent registration; (2) a bar against Amersey; (3) a cease-and-desist order; and (4) a civil monetary penalty. *Id.* at 11. Amersey stated that he agreed to everything except the Division's penalty recommendation, citing an inability to pay any penalty. *Id.* at 22-23. Regarding revocation of BCTA's transfer registration, Amersey specifically stated that he was in the process of closing down BCTA and that he planned to file the necessary paperwork to withdraw BCTA's transfer registration. *Id.* at 8-9, 12-13.

**D. This Court's Order Following Prehearing Conference**

Following the prehearing conference, this Court issued an Order in which the Court found that at the prehearing conference, Amersey "stated that he does not contest the OIP's allegations," and that he "only takes issue with the Division's penalty recommendation, contending that Respondents are unable to pay a penalty." *See* Order Following Prehearing Conference (9/29/16) at 1.

**E. The Current Status of BCTA's Transfer Registration**

As discussed above, at the prehearing conference Amersey stated that he planned to file the necessary form to withdraw BCTA's transfer registration, and that BCTA would be effectively shut down by the end of the first week of October. Exh. 1 at 12-13. In fact, on September 29, 2016, the Division emailed a copy of the appropriate Form TA-W (Notice of Withdraw From Registration as Transfer Agent) to Amersey and provided him links to information on the Commission's website regarding filing the form. *See* Attached Exh. 2 (Stockwell email to

Amersey, 9/29/16). Amersey responded that he would come back to the Division if he had any more questions. *Id.*

However, as of the filing of this motion, a review of EDGAR reflects that BCTA has not yet filed a Form TA-W to withdraw its registration.

### **III. ARGUMENT**

#### **A. Summary Disposition Standard**

Amended Rule 250(c) of the Commission's Rules of Practice permits a party to move for summary disposition on any or all of the OIP's allegations. At the prehearing conference and in a subsequent Order dated September 29, 2016, the Court permitted the Division to file a motion for summary judgment against Respondents.

A motion for summary disposition should be granted when there is "no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law." Rule of Practice 250(c) (amended 2016). A factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See, e.g., In the Matter of Roger M. Detrano*, Initial Dec. Rel. No. 242, 2003 WL 22867443 (Dec. 4, 2003). The opposing party "may not rest upon the mere allegations or denials of its pleadings." *See In the Matter of Currency Trading Int'l, Inc.*, Rel. No. 263, 2004 WL 2297418, at \*2 (Oct. 12, 2004).

#### **B. Amersey's Admissions Leave No Material Facts in Dispute**

At the prehearing conference Amersey stated that he does not contest the allegations contained in the OIP, and that he only opposed the Division's penalty recommendation, contending that Respondents are unable to pay any penalty. Amersey's admissions, along with the Court's subsequent Order Following Prehearing Conference, establish a set of undisputed facts as detailed in the OIP and resolve all issues as to liability. Therefore the Court should find the Respondents

liable for willfully violating Sections 17(a)(3) and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder, as alleged in the OIP.

Further, Amersey's admissions resolve all remedial sanctions to be imposed under Section 17A and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), except for civil penalties pursuant to Section 21B of the Exchange Act.

**C. Amersey's Admissions are Imputed to BCTA**

Amersey appeared *pro se* at the prehearing conference on behalf of himself and BCTA. To the extent there is any dispute as to BCTA's liability, Amersey's admissions and liability are imputed to BCTA since he owned and controlled BCTA. It is black-letter law that entities such as BCTA act only through their agents and are responsible for the acts the agents perform in that capacity, including violations of the securities laws. *See, e.g., Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106-07 (10th Cir. 2003) (scienter of the controlling officers of a corporation may be attributed to the corporation itself to establish securities fraud liability when officers acting within scope of their apparent authority); *Puskala v. Koss Corp.*, 799 F. Supp. 2d 941, 946 (E.D. Wisc. 2011) ("A corporation or other business entity acts only through its agents, and so a corporation's liability for securities fraud is determined by principles of agency law.").

**D. Sanctions**

The Division requests the following sanctions: (1) a cease-and-desist order against Respondents; (2) revocation of BCTA's transfer agency registration; (3) a bar against Amersey; and (4) civil monetary penalties. Respondents contest only the civil monetary penalty, citing an inability to pay.

## 1. Cease-and-Desist Orders Against Respondents

Section 17A(c)(3) of the Exchange Act permits the Commission to “place limitations on the activities, functions, or operations of” transfer agents under certain circumstances, including a transfer agent that has committed any act enumerated in Section 15(b)(4)(D) of the Exchange Act “or is unable to comply with any such provision.” Furthermore, Section 21C(a) of the Exchange Act allows the Commission to enter an order requiring a person who has violated any provision of the Exchange Act or any rules or regulations thereunder to “cease and desist from committing or causing” such violations or any future violations of such provision rule or regulation. The Commission requires some likelihood of future violation before imposing such an order, however, “a finding of [a past] violation raises a sufficient risk of future violation,” because “evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering [her] to cease and desist.” *KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1185 (2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

Amersey has admitted that BCTA violated the Exchange Act as alleged in the OIP and that he aided and abetted and caused such violations. Further, Amersey does not oppose a cease and desist order under Section 21C(a) of the Exchange Act. Therefore, this Court should issue an order that BCTA and Amersey cease and desist from committing or causing the violations alleged in the OIP, including violations of Sections 17(a)(3) and 17A(d)(1) of the Exchange Act, and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder.

## 2. Revocation of BCTA’s Transfer Agent Registration

Section 17A(c)(3)(A) of the Exchange Act permits the Commission to, among other things, “revoke the registration of [a] transfer agent” under certain circumstances, including a transfer

agent that has committed any act enumerated in Section 15(b)(4)(D) of the Exchange Act “or is unable to comply with any such provision.”

Amersey has admitted that BCTA violated the Exchange Act as alleged in the OIP. Amersey also does not oppose revocation of BCTA transfer agent registration, and in fact indicated at the prehearing conference that he was in the process of shutting down BCTA and would voluntarily file a Form TA-W withdrawing BCTA’s transfer agent registration. However, the appropriate Form TA-W has yet to be filed. Given Amersey’s lack of opposition, and the fact that BCTA has violated the Exchange Act, this Court should order that BCTA’s transfer agent registration be revoked pursuant to Section 17A(c)(3)(A).

### **3. Bar Against Amersey**

Section 17A(c)(4)(C) of the Exchange Act permits the Commission to “censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, or suspend for a period not exceeding 12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization,” under certain circumstances, including a person who has committed any act enumerated in Section 15(b)(4)(D) of the Exchange Act “or is unable to comply with any such provision.”

Amersey has admitted that he aided and abetted and caused BCTA’s violations of the Exchange Act, and he does not oppose a bar as set forth in Section 17A(c)(4)(C) of the Exchange Act. *See* Exh. 1 at 19-22. Accordingly, this Court should order that Amersey be permanently barred pursuant to Section 17A(c)(4)(C) of the Exchange Act.

#### 4. Civil Penalties Against Respondents

Section 21B(a)(2) of the Exchange Act authorizes the Commission to assess civil penalties against persons who violate or caused violations of the Exchange Act, and if such penalty is in the public interest. There are three tiers of penalties, with the third tier allowing the highest penalty based on the egregiousness of the conduct. The first tier requires a showing of a violation of the Exchange Act, or the rules and regulations thereunder. Sec. 21B(b)(1). The second tier additionally requires that the violation “involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.” Sec. 21B(b)(2). The third tier adds another requirement that the violation “directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.” Sec. 21B(b)(3)

Additionally, in determining whether a penalty is in the public interest, six factors are considered: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, (2) the resulting harm to other persons, (3) any unjust enrichment and prior restitution, (4) the respondent’s prior regulatory record, (5) the need to deter the respondent and other persons, and (6) such other matters as justice may require. Sec. 21B(c). Within any particular tier, the Commission has discretion to set the amount of the penalty. *See In the Matter of Brendan E. Murray*, Advisers Act Release No. 2809, 2008 SEC LEXIS 2924, at \*42 (Nov. 21, 2008); *In the Matter of The Rockies Fund, Inc.*, Exchange Act Release No. 54892, 2006 SEC LEXIS 2846, at \*25 (Dec. 7, 2006). “[E]ach case has its own particular facts and circumstances which determine the appropriate penalty to be imposed” within the tier. *SEC v. Murray*, 2013 WL 839840, at \*3 (E.D.N.Y. Mar. 6, 2013) (internal quotation marks and citations omitted); *see also SEC v. Kern*, 425 F.3d 143, 153 (2d Cir. 2005).

Here, BCTA has been unable or unwilling to comply with the Commission's transfer agent rules for almost a decade. In three separate examinations over that period of time, the Commission issued three deficiency letters notifying BCTA of what it believed were multiple deficiencies. These apparent violations were not limited to one rule, but rather a litany of rules of rules and regulations, including (1) failing to secure personally identifiable information of individual security holders (Rule 17Ad-12); (2) failing to prepare and maintain a daily log of transfers (Rule 17Ad-6(a)(2)); (3) failing to retain cancelled certificates and accompanying documents (Rule 17Ad-6(c)); (4) failing to file timely amendments to Form TA-1 (Rule 17Ac2-1); (5) failing to timely file Forms TA-1 and TA-2 (Rule 17Ac2-2); (6) failing to file assumption notices and to file termination notices for issuer clients (Rule 17Ad-16); (7) failing to properly search for lost security holders (Rule 17Ad-17); (8) failing to notify the Commission of lost and damaged certificates (Rule 17f-1(c)); (9) failing to safeguard client funds and securities (Rule 17Ad-12); (10) failing to prepare and maintain the required records or calculations to determine exemptions from rules (Rule 17Ad-4); and (11) failing to submit a fingerprint card for Amersey (Rule 17f-2). *See* OIP at ¶¶ 10-15.

For example, as alleged in the OIP, of the fifteen (15) Forms TA-1 and TA-2 filed by BCTA in the past eight (8) years, only one has been fully compliant. OIP at ¶ 12. Since at least 2011, BCTA commingled shareholder funds with non-shareholder funds in a trust account that Amersey used for his own benefit and the benefit of other businesses he controlled, in violation of Rule 17Ad-12. *Id.* at ¶ 13. And BCTA failed to use reasonable care to ascertain the correct addresses of lost security holders as required by Rule 17Ad-17, instead relying on "sloppy" policies and procedures. *Id.* at ¶ 14. Amersey, as BCTA's owner and control person, was well

aware of these violations and the apparent deficiencies noted over and over again by the Commission's exam staff, yet he continually failed to correct them.

In looking at the public interest, the exam staff's numerous deficiency letters show a regulatory history chock full of repeated apparent violations of no less than eleven (11) different rules and regulations. Respondents' repeated violations of the rules, despite warnings from exam staff, also shows a deliberate and reckless disregard of the transfer agent requirements. This is perhaps best exemplified by the fact that after receiving a deficiency letter regarding the safeguarding of client assets, Respondents made at least one more improper transfer of funds from BCTA's trust account to the account of another of Amersey's unrelated companies. OIP at ¶ 13. Finally, the Respondents' decades-long history of violating the rules, despite repeated warnings, establishes a need to deter Respondents from committing such acts and omissions.

The bulk of the above factors suggest that a civil penalty is necessary to further the public interest.<sup>1</sup> Furthermore, Respondents' deliberate and reckless disregard for the transfer agent requirements necessitates a tier two penalty pursuant to Section 21B(b)(2). The Division requests that the Court impose against Respondents tier-two civil penalties that it deems appropriate.<sup>2</sup>

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<sup>1</sup> On reply the Division will address any arguments raised by Respondents as to any purported inability to pay civil penalties. Although Respondents have provided some financial information regarding a purported inability to pay, and the Division has obtained some information directly from third parties (and provided this information to Respondents), the Division has not obtained all the information required by Rule of Practice 630. *See* Exh. 1 at 32.

<sup>2</sup> The Respondents should be jointly and severally liable for the entire amount of any penalty imposed. Section 20(a) of the Exchange Act provides, in relevant part, that "[e]very person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same

#### IV. CONCLUSION

The Division respectfully requests that the Court find the Respondents liable for willfully violating Sections 17(a)(3) and 17A(d)(1) of the Exchange Act and Rules 17Ac2-1, 17Ac2-2, 17Ad-4, 17Ad-12, and 17Ad-17 thereunder, as alleged in the OIP.

Further, the Court should impose the following sanctions: (1) enter a cease-and-desist order against Respondents pursuant to Sections 17A(c)(3) and 21C(a) of the Exchange Act; (2) revoke BCTA's transfer agency registration pursuant to Section 17A(c)(3)(A) of the Exchange Act; (3) bar Amersey from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, municipal advisor, or nationally recognized statistical rating organization, pursuant to Section 17A(c)(4)(C) of the Exchange Act; and (4) impose tier-two civil penalties against Respondents pursuant to Section 21B(a)(2) of the Exchange Act.

Dated: October 28, 2016

Respectfully submitted:



Timothy J. Stockwell  
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---

extent as such controlled person.” *See also SEC v. Quan*, 2014 WL 4670923, at \*15 (D. Minn. Sept. 19, 2014), *amended* 2014 WL 6982914 (D. Minn. Dec. 10, 2014).

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17405**

**In the Matter of**

**BAY CITY TRANSFER AGENCY  
AND REGISTRAR, INC. and  
NITIN M. AMERSEY**

**Respondents.**

**CERTIFICATE OF SERVICE**

Timothy J. Stockwell, an attorney, certifies that on October 28, 2016, he caused a true and correct copy of the foregoing Memorandum in Support of Motion for Summary Disposition against Respondents Bay City Transfer Agency and Registrar, Inc. and Nitin M. Amersey to be served on the following by overnight delivery and email:

Honorable Brenda P. Murray  
Chief Administrative Law Judge

Nitin M. Amersey  
(Individually and on behalf of BCTA)

Dated: October 28, 2016



Timothy J. Stockwell  
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1 APPEARANCES:

2  
3 On behalf of the Securities and Exchange Commission:

4 TIMOTHY J. STOCKWELL, ESQ.

5 CHARLES J. KERSTETTER, ESQ.

6 Securities and Exchange Commission

7 Division of Enforcement

8 175 West Jackson Boulevard, Suite 900

9 Chicago, Illinois 60604

10  
11 On behalf of the Respondent (Via Telephone):

12 NITIN M. AMERSEY, PRO SE

1 Respondent, the Respondent is Bay City Transfer  
2 Agency and Registrar, Inc., and Nitin M. Amersey.

3 Mr. Amersey, do you -- are you  
4 represented by a lawyer?

5 MR. AMERSEY: No, I'm not.

6 JUDGE MURRAY: Okay. And let me just  
7 say for the record, I think one of the problems  
8 with service was that the agency might have the  
9 wrong address on the service list.

10 And Mr. Amersey's address is

11 in Freeland, Michigan, zip code

12 . But in the green card that the post office  
13 sent back to the agency, based on certified mail,  
14 it shows that it was accepted on the 6th of  
15 September and the address is , and  
16 it's Sanford, Michigan, S-a-n-f-o-r-d, Michigan,  
17 zip code

18 Mr. Amersey, is that your correct  
19 address?

20 MR. AMERSEY: Judge, can I just explain  
21 the situation?

22 JUDGE MURRAY: Well, first of all, let's  
23 get the address right --

24 MR. AMERSEY: It's regarding the  
25 address, yes, but I would rather have it mailed to

1 PROCEEDINGS

2 JUDGE MURRAY: This is the first  
3 pre-hearing conference in Administrative  
4 Proceeding File No. 3-17505.

5 The order instituting proceedings was  
6 issued by the Commission on the 18th of August.  
7 It took a while to achieve service on the  
8 Respondent, but service was finally achieved on  
9 either the 6th or the 7th of September.

10 So Respondent's answer is due within 20  
11 days. And if you allow three days for mailing,  
12 which is allowed under the Commission's rules of  
13 practice, his answer is not due until the 30th of  
14 this month.

15 Okay. So formally now, can you state  
16 your name and who you represent for the record.  
17 And why don't we start off with the Division.  
18 Would the Division counsel like to state their  
19 names and affiliation?

20 MR. KERSTETTER: Certainly, Your Honor.

21 My name is Charles Kerstetter,

22 K-e-r-s-t-e-t-t-e-r.

23 MR. STOCKWELL: My name is Tim Stockwell  
24 with the Division. S-t-o-c-k-w-e-l-l.

25 JUDGE MURRAY: Okay. And for the

1 another address, any notice, and Mr. Stockwell has  
2 it.

3 JUDGE MURRAY: Oh, okay. Mr. Stockwell,  
4 were you going to share that with the Agency?

5 MR. STOCKWELL: Yes, Your Honor.

6 It was actually referenced in our last  
7 motion that was provided regarding evidence that  
8 Mr. Amersey controls Bay City. We did reference a  
9 new mailing address for Mr. Amersey which is on  
10 the certificate of service.

11 And it's a -- the address we have -- and  
12 Mr. Amersey can correct us if we're wrong -- is  
13 , Saginaw, Michigan  
14

15 JUDGE MURRAY: Okay. I have that -- I  
16 have your notice in front of me. Oh, you put it  
17 on the service list; is that --

18 MR. STOCKWELL: Yes, Your Honor. We  
19 referenced it in Paragraph 6 of our last -- of our  
20 notice saying that we obtained a new address for  
21 Mr. Amersey, and we reference it in the  
22 certificate of service.

23 JUDGE MURRAY: I got it. I got it in  
24 front of me.

25 Okay. Good. I'll send that up to the

1 Secretary's office just so they have it on record  
 2 and we'll make a notation of it in my office.  
 3 Okay. Mr. Amersey, I'm just -- let me  
 4 say that I would -- you're considered a pro se  
 5 litigant. That means somebody that appears for  
 6 themselves in the proceeding.  
 7 So --  
 8 MR. AMERSEY: Right.  
 9 JUDGE MURRAY: -- I'll try to -- I'll  
 10 try to explain things to you as best I understand  
 11 them, and then the Commission of -- the Division  
 12 counsel can correct me if I'm wrong.  
 13 But when the SEC sends a case down to my  
 14 office, which is the Office of Administrative Law  
 15 Judges -- they tell me in the order instituting  
 16 proceedings that you got a copy of that -- I am  
 17 supposed to hold a public hearing at which the  
 18 government, the Division of Enforcement, has an  
 19 opportunity to prove that those allegations are  
 20 correct, that the -- that the statements in the  
 21 order instituting proceedings are true.  
 22 And then you have an opportunity at this  
 23 public hearing to show that the Division of  
 24 Enforcement is incorrect and the allegations are  
 25 not true. And then, usually, I come back to

1 Washington then and collect the evidence and write  
 2 an initial decision.  
 3 Now, I don't know exactly where or how  
 4 you intend to proceed with this, but I have been  
 5 given the job by the agency to conduct a hearing  
 6 to ascertain whether the allegations are true.  
 7 And so that's -- this is a -- today is a  
 8 pre-hearing conference to determine whether we  
 9 should have a hearing and where the hearing should  
 10 be and when it should be and set a schedule for  
 11 the exchange of evidence and the name of witnesses  
 12 and things like that. That's what I'm supposed to  
 13 do with this hearing.  
 14 So do you -- have you talked to the  
 15 Division of Enforcement lawyers about the  
 16 allegations in the case?  
 17 MR. AMERSEY: Yes, I have.  
 18 JUDGE MURRAY: Okay.  
 19 MR. AMERSEY: But before we get into  
 20 that, could I just explain the -- what happened in  
 21 terms of service and address?  
 22 JUDGE MURRAY: Oh, sure.  
 23 MR. AMERSEY: I -- [REDACTED]  
 24 [REDACTED], end of July, and [REDACTED]  
 25 [REDACTED]

1 address -- for the time being until my situation  
 2 stabilizes and settles, and that was the reason  
 3 for the problem in service.  
 4 JUDGE MURRAY: Okay. Well, we're all  
 5 set.  
 6 There's -- as long as you know what's  
 7 going on, then the service problem has been  
 8 resolved. It's no problem. It's just making sure  
 9 that you are aware of what's going on.  
 10 MR. AMERSEY: Right.  
 11 JUDGE MURRAY: And what's going on is  
 12 that the Agency, the Securities and Exchange  
 13 Commission, has made these allegations, the  
 14 statements that are in the order instituting  
 15 proceedings.  
 16 So how do you intend to show that those  
 17 allegations are not true? I mean, I can ask  
 18 that --  
 19 MR. AMERSEY: I -- I have discussed this  
 20 with Mr. Stockwell and Mr. Kerstetter, and I am  
 21 not going to -- I am not going to dispute the  
 22 allegation.  
 23 I'm in the process of closing the Agency  
 24 down. And as I have indicated to them, I would  
 25 like -- and I apologize if I'm not following

1 proper court procedure, but what I did indicate to  
 2 them was that I would not dispute that.  
 3 I am closing the Agency down, and that  
 4 the -- that on the -- that nobody has -- including  
 5 on the order of -- on the matter of commingling of  
 6 funds, nobody has lost any money. And I should  
 7 have a letter from the company saying that they  
 8 authorized Bay City Transfer to take funds out of  
 9 that account. And -- for our fees. And they've  
 10 already given a letter which the Agency has saying  
 11 that the only -- the three cents.  
 12 So no one has lost any money in this  
 13 thing and there's no -- the other allegations are  
 14 bureaucratic mistakes on our part. So I'm not  
 15 going to -- I cannot dispute them, because they  
 16 were correct.  
 17 And all I asked the Agency was, if at  
 18 all possible, not to have -- and I forget what the  
 19 term is -- not innocent or not guilty, but just to  
 20 have a settlement of the matter now.  
 21 The last thing is, I don't have any  
 22 funds. I'm at the point of -- almost at the point  
 23 of bankruptcy. In fact, I should be bankrupt, but  
 24 it hurts my job prospects.  
 25 So I -- and I had started to provide the

1 Agency with information about my financial status  
2 and -- back in July. [REDACTED]  
3 [REDACTED]  
4 [REDACTED] severely -- I have herniated  
5 discs in my neck and I was incapacitated due to a  
6 flare-up.

7 JUDGE MURRAY: Let me --

8 MR. AMERSEY: So I could not -- I'm  
9 sorry. Go ahead.

10 JUDGE MURRAY: I don't know whether --  
11 about the -- you know, you are a registered  
12 transfer agent or Bay City is. I don't know --

13 MR. AMERSEY: Yes.

14 JUDGE MURRAY: -- whether that  
15 registration is worth any money, whether you could  
16 sell it or whether you should withdraw the  
17 registration.

18 I should imagine -- and I don't know  
19 because I don't -- I can't talk to anybody at the  
20 Agency like the Division of Enforcement. That's  
21 an ex parte communication.

22 I don't know what they want from you.  
23 But I should think if the registration was  
24 withdrawn, that would be one of the major things.  
25 Well, let's ask them. What does the

1 have to deal with it.

2 About the -- about the revocation, why  
3 wouldn't -- or why wouldn't it be --  
4 alternatively, couldn't he file a form TA-dot- --  
5 dash-W and withdraw the registration?

6 MR. KERSTETTER: We believe he could,  
7 Your Honor. To the best of our knowledge, that  
8 has not been done.

9 JUDGE MURRAY: Well, I don't -- Mr.  
10 Amersey, are you with us?

11 MR. AMERSEY: Yes, I am.

12 JUDGE MURRAY: Okay. But, see, there --  
13 the Division of Enforcement is -- wants me to  
14 issue an order revoking the registration. I think  
15 it will bring us to the same place. But if you  
16 withdrew the registration, I don't know -- you'd  
17 have to talk to a lawyer whether that would be  
18 better for you or an order of revocation wouldn't  
19 make a difference. I don't know whether it's  
20 better to withdraw.

21 MR. AMERSEY: I am prepared to withdraw  
22 the -- withdraw the registration.

23 I've already taken -- we have basically  
24 five active clients and I've taken steps to tell  
25 each client that I'm closing the Agency down and

1 Division of Enforcement want in this case?

2 MR. KERSTETTER: Basically, four things  
3 Your Honor, and we have discussed this with Mr.  
4 Amersey and he is correct that, really, the only  
5 sticking point we believe is the penalties issues.

6 The first thing we would be seeking is  
7 the revocation of Bay City's license as a transfer  
8 agent. We don't think that that is particularly  
9 an issue with Mr. Amersey.

10 Secondly, we'd be seeking a bar against  
11 Mr. Amersey pursuant to Section 17a-(c)4C of the  
12 1934 Act. A cease and desist order as to the  
13 alleged violations in the order, which, once  
14 again, I don't believe is an issue with Mr.  
15 Amersey.

16 The issues was as to penalties, Your  
17 Honor, and Mr. Amersey's ability to pay. We had  
18 discussed this for some period of time with Mr.  
19 Amersey and were attempting to obtain documents  
20 from Mr. Amersey which would show his ability or  
21 inability to pay, but we weren't able to assemble  
22 those documents from Mr. Amersey and that's where  
23 we are today.

24 JUDGE MURRAY: Okay. Well, it's not a  
25 very good place, but it's where we are. So we

1 found them a new transfer agent.

2 And I forget the form number, 1716 or  
3 17- -- something, which I have told them that that  
4 is being filed this week and that -- along with  
5 the new transfer agent.

6 So let's say by -- and I did also inform  
7 the DTC of that. So the Agency should, for all  
8 practical purposes, be closed as of next week.

9 JUDGE MURRAY: Okay. I think if you're  
10 going to withdraw the registration, there is a  
11 specific form that you have to file --

12 MR. AMERSEY: Yes.

13 JUDGE MURRAY: -- with the SEC to do  
14 that.

15 MR. AMERSEY: I understood that from the  
16 discussion just now. So I will find the form and  
17 file it.

18 JUDGE MURRAY: Okay. Maybe they can  
19 help you do that.

20 Now, as far as the penalties go, there  
21 is a specific -- it's very detailed, but there is  
22 a very -- there are specific -- there's a specific  
23 rule that you have -- a form that you have to fill  
24 out if you haven't got the ability to pay.

25 Is the Division familiar with that?

1 MR. KERSTETTER: Yes, Your Honor. And  
 2 we did supply Mr. Amersey with those materials.  
 3 And to be honest, the issue was that --  
 4 we discussed this issue with Mr. Amersey over  
 5 several months and Mr. Amersey was not able to  
 6 assemble the materials that would be necessary to  
 7 complete that paperwork.  
 8 JUDGE MURRAY: Okay.  
 9 MR. AMERSEY: And -- and the Agency  
 10 was -- Mr. Kerstetter and Ms. Guardi were kind  
 11 enough to -- I did not have the money to get the  
 12 bank statements that was required in the past --  
 13 from past bank statements and I just didn't have  
 14 the funds. So they subpoenaed the documents  
 15 which --  
 16 MR. KERSTETTER: That's correct, Your  
 17 Honor.  
 18 We did get some of the records that  
 19 would be needed for those forms, but we still  
 20 don't have all of them. Some of them -- we still  
 21 don't have the paperwork that would be  
 22 necessary --  
 23 MR. AMERSEY: Right.  
 24 MR. KERSTETTER: -- to supply those  
 25 materials to the Commission.

1 JUDGE MURRAY: Well, let me ask the  
 2 Division.  
 3 What do you want me to do in this case?  
 4 MR. KERSTETTER: Well, actually, Your  
 5 Honor --  
 6 JUDGE MURRAY: And you've gone through  
 7 the four points, but, I mean, as a practical  
 8 matter, if I -- under the Commission's rules of  
 9 practice, I have to put out an order following  
 10 this pre-hearing conference detailing what we  
 11 discussed and what we decided.  
 12 And the question would be is -- I don't  
 13 think there's any reason to have a hearing. I  
 14 mean, it doesn't seem to me to make sense. The  
 15 gentleman does not dispute the charges. So  
 16 there's no sense in having a hearing to determine  
 17 whether as a matter of fact the allegations are  
 18 true. He's not going to dispute them.  
 19 So the question would be maybe, as I see  
 20 it, either allow you to file a motion for summary  
 21 disposition or to just postpone this whole thing  
 22 for another 30 days. And then at the end of 30  
 23 days, have another pre-hearing or have you file a  
 24 status report after conferring with the Respondent  
 25 on how you want to resolve this.

1 Does the Division have an opinion on  
 2 that?  
 3 MR. KERSTETTER: Yes, Your Honor.  
 4 I mean, we do think this matter would be  
 5 appropriate for summary disposition. I mean, as  
 6 you've noted, there really isn't a dispute over  
 7 the facts of this case as to most of the relief  
 8 we're seeking.  
 9 We think the most expeditious manner to  
 10 move forward would be to have summary disposition  
 11 solely on the issue of the appropriateness and  
 12 size of penalties as well as Mr. Amersey's ability  
 13 to pay.  
 14 JUDGE MURRAY: Okay. Mr. Amersey, are  
 15 you with us on that?  
 16 I mean, when I say "are you with us," do  
 17 you understand what they're saying?  
 18 MR. AMERSEY: No, I did not understand  
 19 that. It's -- so the only decision would be --  
 20 made would be -- I mean, I've agreed to everything  
 21 else, basically.  
 22 So -- and as I see it, the only two  
 23 items pending, one is my ability to pay and two --  
 24 and providing the Commission with the balance of  
 25 the information required and, two, and my -- on

1 the ability to settle without innocence or guilt.  
 2 JUDGE MURRAY: Let me see if I can  
 3 explain, and the Division correct me if I'm wrong.  
 4 What they're -- what the Division is  
 5 saying is, and what I think is true, there's no  
 6 reason to have a hearing; for me to go out to  
 7 Saginaw, Michigan --  
 8 MR. AMERSEY: Right.  
 9 JUDGE MURRAY: -- and get a courtroom  
 10 and call witnesses.  
 11 MR. AMERSEY: There's no point.  
 12 JUDGE MURRAY: It doesn't make any sense  
 13 because --  
 14 MR. AMERSEY: No.  
 15 JUDGE MURRAY: -- you do not dispute  
 16 that what the allegations are -- you do not  
 17 dispute -- that they are false. You're saying  
 18 that you agree with the allegations in the order  
 19 instituting proceedings, so you're not going to  
 20 dispute them.  
 21 MR. AMERSEY: Right.  
 22 JUDGE MURRAY: So as an alternative, as  
 23 an alternative to a hearing, there is a way that  
 24 the Division -- if there's no issues of fact,  
 25 there is a way, under the rules, that the

1 government's side can file a motion and say we  
2 think, based on the Respondent's admission of the  
3 facts, that the facts as alleged are true, that  
4 the following sanctions or penalties should be  
5 assessed.

6 And they want revocation. They want a  
7 bar, a statement by the Commission saying you  
8 cannot participate broadly in the securities  
9 industry. It's specific. It says each one. And  
10 that you should be ordered to cease and desist  
11 from the activities that they allege that you  
12 committed that were in violation of the -- of the  
13 securities act, and that they want a penalty.  
14 They haven't told us how much, but they want you  
15 to be assessed a penalty.

16 So this motion, this written document  
17 that they would file would make those allegations  
18 and say why they think the penalties are deserved.  
19 And then you would have -- I don't know. You  
20 would have 15 days or so to respond to that motion  
21 in writing and say, No, this is not true. I can't  
22 afford it, and all this kind of thing.

23 Then they have a chance to rebuttal and  
24 I have to take those papers and read them and then  
25 make a judgment on it, because that's what they're

1 exact -- Your Honor, if you'd like, I can read the  
2 exact language of a bar pursuant to Section  
3 17a-(c)4C.

4 JUDGE MURRAY: Hold on just a jiffy  
5 until I get it.

6 So it's 17(a) -- and what's the rest of  
7 it now? C-4, did you say?

8 MR. KERSTETTER: (c)4C, Your Honor.  
9 Lower case --

10 JUDGE MURRAY: C.

11 MR. KERSTETTER: Lower case C, 4,  
12 capital C.

13 JUDGE MURRAY: Let me read it.

14 Okay. I got it.

15 MR. KERSTETTER: So would you like me to  
16 read that to Mr. Amersey, Your Honor?

17 JUDGE MURRAY: Yeah -- well, yeah. Let  
18 me read it because --

19 MR. KERSTETTER: Sure.

20 JUDGE MURRAY: -- it might -- yeah.

21 Okay.

22 It says, The appropriate regulatory  
23 agency for a transfer agent by order shall censure  
24 or place limitations on the activities or  
25 functions of any person associated, seeking to

1 saying.

2 MR. AMERSEY: Okay.

3 JUDGE MURRAY: That's a motion for  
4 summary disposition.

5 MR. AMERSEY: Okay.

6 JUDGE MURRAY: Is that agreeable with  
7 you?

8 But you're going to have to have  
9 somebody help you. I mean, you can't -- you're  
10 not going to be able to dispute their allegations,  
11 I don't think.

12 MR. AMERSEY: I'm not disputing their  
13 allegations.

14 The only thing that I did discuss with  
15 Mr. Kerstetter and I believe Ms. Ariella -- and,  
16 Mr. Kerstetter, please correct me if I'm wrong --  
17 the -- under the Commission's orders, I asked you  
18 whether you were seeking a bar from anything in  
19 terms of the public company's actions and  
20 securities or just regarding transfer agencies,  
21 and you had told me it was just regarding transfer  
22 agencies and there was no issue with me being a  
23 director or an executive of a public company.

24 MR. KERSTETTER: Well, no, that's not  
25 quite correct, sir. I mean, I can read you the

1 become associated or at the time of the alleged  
2 misconduct associated or seeking to become  
3 associated with the transfer agent or suspend for  
4 a period not exceeding 12 months or bar any such  
5 person from being associated with any transfer  
6 agent, broker, dealer, investment adviser,  
7 municipal securities dealer, municipal adviser or  
8 nationally recognized statistical rating agency.

9 If the appropriate regulatory agency  
10 finds on the record after notice and opportunity  
11 for hearing that such censure, placing of  
12 limitations, suspension or bar is in the public  
13 interest, and that such person has committed or  
14 omitted any act or are subject to an order or  
15 finding enumerated, and then it gives a lot of  
16 paragraphs.

17 So it's -- Mr. Amersey, does that -- it  
18 doesn't -- it doesn't exclude you from being an  
19 officer or director of a public company. At least  
20 this section doesn't, but I don't know. I'm not  
21 that familiar with 17(a).

22 But there is a provision in the other  
23 parts of the securities statutes that if you're  
24 subject to a cease and desist, I believe the  
25 government can ask for an officer or director bar.

1 Does the Division counsel -- am I right on that?

2 MR. KERSTETTER: It's our -- it's our  
3 understanding, Your Honor, since we are  
4 instituting under the provisions of -- relative to  
5 the transfer agents -- to a transfer agent, that  
6 we would not be seeking an officer and director  
7 bar.

8 JUDGE MURRAY: So if you're not seeking  
9 it, it doesn't make any difference whether the  
10 statute allows it because they're not -- they're  
11 not -- they're not going to ask that I do that.

12 So are you -- do you understand so far  
13 where we are, Mr. Amersey?

14 MR. AMERSEY: Yes, I do.

15 JUDGE MURRAY: They're going to go after  
16 a penalty and a cease and desist and a bar and a  
17 revocation, but they're not going after an officer  
18 and director prohibition.

19 MR. AMERSEY: Okay.

20 JUDGE MURRAY: All right. Okay. I  
21 think -- I think -- well, you've both told me that  
22 the main issue is the penalty and the -- Mr.  
23 Amersey's ability to pay that penalty.

24 Is that -- Mr. Amersey, do you think  
25 that's about what we're really -- what the issue

1 JUDGE MURRAY: And let me ask the  
2 Division.

3 Does the Division -- does the Division  
4 object if I waive an answer and take Mr. Amersey's  
5 statement on the record that he doesn't dispute  
6 the allegations or he doesn't contest the  
7 allegations as his answer in this proceeding?

8 MR. KERSTETTER: We have no objection,  
9 Your Honor.

10 JUDGE MURRAY: Okay. Mr. Amersey, you  
11 don't have to make any filing.

12 MR. AMERSEY: Okay.

13 JUDGE MURRAY: And as far as an answer  
14 goes, I'm going to consider what you stated on the  
15 record as your answer, because it's going to be  
16 all typed up anyway. So it's the same thing as if  
17 you submitted a separate writing.

18 MR. AMERSEY: Right.

19 JUDGE MURRAY: Okay. All right.

20 Let me -- let me ask the Division, when  
21 do you think you could file a -- oh, one thing I  
22 wanted to ask. Under Rule 250 of the rules of  
23 practice, the old rules of practice -- the new  
24 ones went into effect today, but 250 is still 250.  
25 It says that a motion for summary disposition

1 is?

2 MR. AMERSEY: That's right.

3 And am I required to file a day after  
4 tomorrow on the 30th, I believe, a response to  
5 their -- an answer? Sorry.

6 JUDGE MURRAY: Do you think -- are you  
7 able to do that? Do you want me to give you more  
8 time?

9 MR. AMERSEY: I would like more time  
10 because of [REDACTED]  
11 [REDACTED].

12 JUDGE MURRAY: Well, yeah. Well,  
13 really, the answer is -- I mean, I think you've  
14 given an oral answer --

15 MR. AMERSEY: My answer is that I agree  
16 to all the -- all the charges, basically, and all  
17 the allegations, and it's only a matter of the  
18 fine and -- and what else, Mr. Kerstetter?

19 I believe it's only really a matter of  
20 the -- of the fine. I'm agreeing to everything  
21 else.

22 MR. KERSTETTER: Well, correct, Your  
23 Honor.

24 Just the penalty and Mr. Amersey's and  
25 Bay City's ability to pay those penalties.

1 after an answer has been filed and documents made  
2 available for inspection.

3 I couldn't find on the docket sheet that  
4 you have notified Mr. Amersey that the documents  
5 from the investigation were available for  
6 inspection and copying. Did you do that?

7 MR. KERSTETTER: We apologize for that,  
8 Your Honor. We have, in fact, provided all of  
9 those documents to Mr. Amersey.

10 JUDGE MURRAY: You have done that?

11 MR. KERSTETTER: Yes.

12 JUDGE MURRAY: Okay.

13 MR. KERSTETTER: Yes. In fact, Your  
14 Honor, we sent those documents to Mr. Amersey as  
15 opposed to just making them available.

16 JUDGE MURRAY: Okay.

17 Mr. Amersey, I just wanted to know (sic)  
18 what I just said. Under the Commission's rules,  
19 they have to make available for copying and for  
20 you to look at all of the information that they've  
21 gathered during the investigation. And I couldn't  
22 see in the file that they had done that, but they  
23 tell me on the record that they have done it.

24 Do you agree with that?

25 MR. AMERSEY: I do have a, I believe, a

1 CD or a DVD with the information.  
 2 JUDGE MURRAY: Okay.  
 3 MR. AMERSEY: I have not looked at it.  
 4 I have not had the ability to do so.  
 5 JUDGE MURRAY: Okay. All right. All  
 6 right.  
 7 When is the Division -- when should I  
 8 set the date for a motion for summary  
 9 disposition -- for filing that motion?  
 10 MR. KERSTETTER: Would roughly 30 days  
 11 be acceptable, Your Honor?  
 12 JUDGE MURRAY: That's fine. That's  
 13 fine.  
 14 Let's see. Today is the 28th. So if  
 15 we --  
 16 MR. KERSTETTER: Can we just say -- I'm  
 17 sorry, Your Honor. My calendar's pulling up kind  
 18 of slowly.  
 19 JUDGE MURRAY: I always give -- I always  
 20 do it on a Monday so you have the weekend to worry  
 21 about it.  
 22 MR. KERSTETTER: Thank you, Your Honor.  
 23 Can we say --  
 24 JUDGE MURRAY: So if I get -- the 31st  
 25 is a -- one after -- roughly. Monday in 30 days

1 would be the 31st of October.  
 2 MR. KERSTETTER: That would be fine --  
 3 that would be fine by us, Your Honor.  
 4 MR. AMERSEY: What documentation would  
 5 you need from me by then, Mr. Kerstetter, on the  
 6 financial records? Because I am severely limited  
 7 as we've discussed before as to what I have and  
 8 what I don't have and what --  
 9 MR. KERSTETTER: What -- we really  
 10 wouldn't need anything from you by that time, sir.  
 11 I mean, basically, how it would  
 12 proceed -- and, Your Honor, please correct me if  
 13 I'm misstating anything. But, basically, we would  
 14 file a motion seeking a penalties.  
 15 Then in response to that, you would file  
 16 something saying whatever you think about the  
 17 penalties and then letting the judge know whatever  
 18 you want to supply the judge with as to your  
 19 financial ability to pay.  
 20 MR. AMERSEY: Okay.  
 21 JUDGE MURRAY: Yes. See, there --  
 22 they're the government and they want to win, so  
 23 they want to assess a penalty. You're on your own  
 24 and you're going to have to figure out how to --  
 25 how that that's not going to happen.

1 So the Commission rule of practice is  
 2 it's Rule 630 and it talks about inability to pay  
 3 disgorgement, interest or penalties, and it talks  
 4 about filing a financial disclosure statement.  
 5 And any Respondent who asserts an  
 6 inability to pay may be required to file a sworn  
 7 financial disclosure statement and to keep the  
 8 statement current.  
 9 The financial statement shall show the  
 10 Respondent's assets, liabilities, income or other  
 11 funds received and expenses or other payments from  
 12 the date of the first violation alleged against  
 13 that Respondent in the order instituting  
 14 proceedings or such later date as specified by the  
 15 Commission.  
 16 So -- so for you to dispute that you can  
 17 pay the penalty that they're going to ask for,  
 18 you're going to have to produce some -- some hard  
 19 factual bank accounts and things, statements.  
 20 You're going to prove it. You just can't say, I  
 21 can't afford this.  
 22 MR. AMERSEY: I understood they have  
 23 them all. They were all requested by subpoena  
 24 and -- except the current statements, the last  
 25 three months, I guess.

1 MR. KERSTETTER: Right. And those bank  
 2 statements should be on the disc that we sent you,  
 3 sir.  
 4 MR. AMERSEY: Yes. Right.  
 5 And -- but, Mr. Kerstetter you also  
 6 suggested one thing: That we ask the judge if she  
 7 would determine what -- what the penalty -- what a  
 8 suitable penalty would be and what information she  
 9 would need to come to a decision.  
 10 MR. KERSTETTER: Well, right, sir.  
 11 The way it would usually work is when we  
 12 submit our motion, we would request a certain size  
 13 penalty or a penalty pursuant to a certain tier  
 14 under the '34 Act, and then you would get a chance  
 15 to respond to that.  
 16 MR. AMERSEY: Okay. And it's then the  
 17 judge's decision?  
 18 MR. KERSTETTER: We believe so, Your  
 19 Honor.  
 20 JUDGE MURRAY: We know -- we're  
 21 shuffling papers here looking at times under the  
 22 new rules of practice, the motion for summary  
 23 disposition. Let's see.  
 24 Okay. All right. So we've got October  
 25 31st is when the Division of Enforcement is going

1 to send -- is going to file a motion for summary  
2 disposition.

3 Now, we're going to have to determine  
4 what's a good -- how much time are you going to  
5 need to file something in reply to that motion?

6 Do you need 30 days?

7 MR. AMERSEY: Is it at all possible to  
8 get more time?

9 JUDGE MURRAY: Well, tell me how much  
10 time you need.

11 MR. AMERSEY: Say 60 days.

12 The only reason is I ask that is I've  
13 been trying to get well enough this year to -- I'm  
14 originally from Bombay, India, and I'm trying to  
15 get well enough to fly there because my sister is  
16 dying of cancer.

17 And I was trying to go there. As things  
18 stand right now, she suggested I come November  
19 3rd. I don't have a ticket or anything yet, but I  
20 was just planning on one-week trip then.

21 JUDGE MURRAY: What's the Division's  
22 position on that?

23 MR. KERSTETTER: We understand Your  
24 Honor's concerns about meeting the new deadlines  
25 under the new rules, but absent any concerns under

1 is in the transcript of today's hearing and we  
2 have the Division has all the financial  
3 information.

4 Is the Division -- I'm just trying to  
5 think out loud. If -- if the Division's got the  
6 financial information, how am I going to judge  
7 whether the Division's recommended penalty is  
8 valid -- I mean, is reasonable?

9 MR. KERSTETTER: Well, actually, if I  
10 could correct you just a little bit, Your Honor.  
11 I mean, we do have some of the financial  
12 information from Mr. Amersey. We did subpoena his  
13 bank records.

14 But, as you know, Your Honor, the  
15 inability to pay form requires quite a bit of  
16 documentation. We do not have all of that  
17 documentation.

18 JUDGE MURRAY: Is it the Division's  
19 impression that this man is wealthier than he's  
20 letting on?

21 MR. KERSTETTER: I guess I can't speak  
22 to that, Your Honor. I think we're obliged to  
23 consider the inability to pay forms that are  
24 promulgated by the Commission.

25 MR. AMERSEY: Mr. Kerstetter, I

1 those rules, we have no objection to giving Mr.  
2 Amersey more time.

3 JUDGE MURRAY: Okay. Mr. Amersey, let's  
4 see. We'll -- I'll give you more time, but -- when  
5 we start running into the winter weather and  
6 holidays and things -- let's say -- why don't we  
7 say December 19th. That's December 19th. That's  
8 more than 30 days, but --

9 MR. AMERSEY: Right.

10 JUDGE MURRAY: -- December 19th.

11 MR. AMERSEY: Thank you.

12 JUDGE MURRAY: Okay. And then the  
13 Division rebuttal would be due in January. Let's  
14 see. What if we said -- let's see. I think  
15 list -- Martin Luther King -- what if we said the  
16 13th of January. Is that too short for the  
17 Division? I don't think so.

18 MR. KERSTETTER: I think that would be  
19 fine, Your Honor.

20 JUDGE MURRAY: Okay. So we've got  
21 October 31st for the Division's motion for summary  
22 disposition. We've got December 19th for Mr.  
23 Amersey's response and we've got January 13th for  
24 the Division's rebuttal.

25 Okay. We've got settled that the answer

1 understand that you have to follow certain  
2 internal protocols and rules, but I would not have  
3 given up -- you know, I wouldn't be evicted from  
4 my home. You've seen the IRS, sir, and the State  
5 of Michigan taxes that I have to pay that amount  
6 in the hundreds of thousands and not -- well,  
7 almost 200,000, I believe.

8 And you've seen the judgments against me  
9 from the two banks I dealt with. One is, I think,  
10 170,000-plus and interest, and the other is 94,000  
11 plus interest. If you think I have the ability to  
12 pay, it's -- anyway, it is what it is.

13 JUDGE MURRAY: It is what it is.

14 And, Mr. Amersey, from the Division's  
15 point of view, you have to remember that this  
16 agency deals with a lot of difficult situations  
17 and a lot of people who pretend that they can't  
18 pay and who have committed serious fraud and all  
19 the rest of it, so it's difficult to distinguish.

20 MR. AMERSEY: No, I understand, Judge.

21 And I have been, as Mr. Kerstetter and  
22 Mr. Stockwell know -- and I've told them this as  
23 well. I have always cooperated with the SEC,  
24 including being a whistleblower in a 74 -- 60-,  
25 \$70-million fraud. And four people went to jail

1 as a result of that.

2 And I have cooperated with the FBI in

3 the pump and dump scam. The Dutch police. The

4 same thing, with the Scotland Yard over the years.

5 And I certainly understand fraud and fraudulent

6 activities.

7 And they have to make their own

8 judgment. I understand that, too, but --

9 JUDGE MURRAY: Well, let me suggest --

10 MR. AMERSEY: -- the situation is what

11 it is.

12 JUDGE MURRAY: Perhaps you can find a

13 legal aid attorney in a Saginaw law school clinic

14 or somebody like that that might be interested in

15 helping you out. I don't know.

16 But anyway --

17 MR. AMERSEY: There's nobody here who

18 has even the basic understanding of securities

19 law.

20 JUDGE MURRAY: Oh, I'm sorry about that.

21 I'm sorry. Okay.

22 Well, all right. If there's nothing

23 else, I will follow the Commission's rules. I'll

24 put out an order. We'll send it to the latest

25 address, and I will put in these dates and I will

1 PROOFREADER'S CERTIFICATE

2

3 In the Matter of: BAY CITY TRANSFER AGENCY AND

4 REGISTRAR, INC., AND NITIN M.

5 AMERSEY

6 ADMINISTRATIVE PROCEEDINGS - PRE-HEARING CONFERENCE

7 File Number: 3-17405

8 Date: Wednesday, September 28, 2016

9 Location: Chicago, Illinois 60604

10

11 This is to certify that I, Donna S. Rayn,

12 (the undersigned), do hereby swear and affirm that

13 the attached proceedings before the U.S. Securities

14 and Exchange Commission were held according to the

15 record and that this is the original, complete, true

16 and accurate transcript that has been compared to the

17 reporting or recording accomplished at the hearing.

18

19 \_\_\_\_\_

20 (Proofreader's Name) (Date)

21

22

23

24

25

1 wait to see what I receive and I'll make the best

2 judgment that I can. Is there anything else that

3 either side wants to say before I adjourn the

4 pre-hearing conference?

5 MR. KERSTETTER: Nothing from the

6 Division, Your Honor.

7 MR. AMERSEY: I just want to ask, Mr.

8 Kerstetter, can we just talk after this thing is

9 finished about the forms for withdrawing the

10 Agency's license? Can I call you back or can you

11 call me?

12 MR. KERSTETTER: Actually, can we speak

13 tomorrow, sir? I actually have another matter I

14 have to attend to --

15 MR. AMERSEY: Sure.

16 MR. KERSTETTER: -- in about 20 minutes.

17 MR. AMERSEY: Not a problem.

18 JUDGE MURRAY: Okay. Then the

19 pre-hearing conference is adjourned.

20 Thank you very much.

21 MR. KERSTETTER: Thank you, Your Honor.

22 MR. STOCKWELL: Thank you, Your Honor.

23 (Whereupon, at 10:15 a.m., the

24 examination was concluded.)

25

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